



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 17, 1996

Ms. Doreen E. McGookey
Assistant City Attorney
Criminal Law and Police Division
501 Police & Courts Bldg.
Dallas, Texas 75201

OR96-0562

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39456.

The City of Dallas (the "city") received a request for copies of records that document allegations of criminal activity engaged in or policy violations committed by a named police officer while the officer was in the employ of the city police department. You believe that some of the requested information, submitted to this office as Exhibits 1-5, is excepted from disclosure by sections 552.101, 552.108, and 552.117 of the Government Code. You state that you have released the remainder of the responsive information to the requestor.

We understand that Dallas is a civil service city under the Texas Local Government Code. Accordingly, portions of the requested information may be excepted from disclosure under section 143.089 of the Local Government Code. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a police department's internal file

pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).¹

We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If they are, the city must withhold the documents from disclosure under section 552.101 as information deemed confidential by statute. Nevertheless, we will address your arguments for exception from disclosure in the event that the documents submitted to this office are not part of the police department's section 143.089(g) files.

You note that the requested information contains several references to the police officer's home address, home telephone number, and social security number. It is unclear to us whether the police officer is or is not currently employed by the city; therefore we address both situations. Sections 552.024(a) and 552.117(1) provide that former public employees may elect to keep their home addresses, home telephone numbers, and social security numbers confidential. You must therefore withhold this information if, at the time the city received the request for information, the former employee had elected to keep this information private. If, however, the police officer is currently employed by the city, section 552.117(2) automatically makes this information confidential.²

You claim that Exhibit 1 is excepted from disclosure by section 552.108 of the Government Code. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records

¹We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

²Amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), incorporated into the Open Records Act by section 552.101, make confidential social security numbers obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990. Open Records Decision No. 622 (1994) at 2-3. Thus, if the police officer's social security number was obtained or maintained pursuant to any such provision of law, the number is confidential and may not be publicly disclosed, regardless of whether the police officer is currently employed by the city.

Decision Nos. 444 (1986), 434 (1986). You state that the records labeled Exhibit 1 are being used in an active criminal investigation of the police officer named in the request. Although the city must release the information contained in Exhibit 1 that is generally found on the first page of the offense report, the remainder of the information is excepted from required public disclosure under section 552.108.

Exhibit 2 contains criminal history record information ("CHRI") that you believe is excepted from disclosure under section 552.101 as information deemed confidential by law.³ We agree. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. As the information in Exhibit 2 is CHRI generated by TCIC and NCIC, the information is excepted from required public disclosure by section 552.101 of the Government Code.

Exhibit 3 contains records of the police officer's personal financial transactions. You contend that this information is excepted from disclosure under section 552.101 as information protected by common-law privacy. Under common-law privacy, information may be withheld if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is highly intimate or

³We also note the presence of CHRI among the documents submitted as Exhibit 1.

embarrassing, and thus it meets the first part of the *Industrial Foundation* test. Open Records Decision No. 545 (1990), 523 (1989), 373 (1983). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* You state that the information at issue does not pertain to transactions between the police officer and the city. The financial information in Exhibit 3, personal bank statements and copies of personal deposit tickets, satisfies both prongs of the *Industrial Foundation* test and is therefore excepted from disclosure under section 552.101.

Exhibit 4 contains references to the cellular phone numbers used by members of the city police department. We assume that police officers are provided with cellular phones and phone numbers at the city's expense. You argue that the numbers are protected from disclosure by section 552.108. Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Internal records and notations of law enforcement agencies and prosecutors are excepted from disclosure when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). You state that release of the phone numbers would unduly interfere with law enforcement, because citizens would frequently call police officers on their cellular phones and create a situation in which the officers would be "constantly handling phone calls, instead of answering police calls for service." We agree that releasing the cellular phone numbers would unduly interfere with law enforcement. Therefore, the city may withhold the phone numbers from disclosure under section 552.108(b). Open Records Decision No. 562 (1990) at 2. However, the other information contained in Exhibit 4 must be released to the requestor.

You state that Exhibit 5 contains records created by a physician. You cite section 5.08(b) of article 4495b, V.T.C.S., for the proposition that these medical records are confidential by law. Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

As the documents at issue are medical records generated by physicians, the documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See § 5.08(c), (j).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39456

Enclosures: Submitted documents

cc: Mr. Joe Munoz
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Dallas, Texas 75219
(w/o enclosures)